

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	Docket No. 02-86
Petition Filed by)	DA 03-721
AirCell, Inc. For Extension of Waiver)	

To: Wireless Telecommunications Bureau

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA")^{1/}, by its attorneys, respectfully submits these Comments in response to the Wireless Telecommunications Bureau's March 11, 2003 Public Notice^{2/} seeking comment on the Petition filed by AirCell, Inc. ("AirCell") and its cellular licensee partners for an extension of its waiver of Section 22.925 of the Commission's rules.^{3/} For the reasons described below, RCA fully supports AirCell's Petition.

After more than four years of real-world operations pursuant to its waiver, the AirCell system is an unqualified success. AirCell, in conjunction with its cellular licensee partners, has proven its ability to accomplish precisely what it set out to do: offer affordable public safety-enhancing communication services to unserved and underserved aviation market

^{1/} RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing these wireless service providers.

^{2/} *Wireless Telecommunications Bureau Seeks Comment on Petition Filed by AirCell, Inc. for Extension of Waiver*, WT Docket No. 02-86, Public Notice, DA 03-721 (rel. Mar. 11, 2003).

^{3/} 47 C.F.R. § 22.925.

segments, without a new allocation of spectrum and, significantly, without causing harmful interference to existing licensees. Based on its performance to date and the important public safety benefits it provides, the AirCell system is well-deserving of both the waiver extension and capacity expansion sought in the Petition.

AirCell Does Not Cause Harmful Interference. After years of day-in, day-out operations, it is clear that the AirCell system does not cause harmful interference to terrestrial cellular operations. None of RCA's 90+ members across the country has reported experiencing interference attributable to AirCell system operations. This holds true for RCA members that are AirCell cellular licensee partners ("RCA AirCell Partners"), as well as RCA members unaffiliated with AirCell. This real-world experience bears out the conclusions of AirCell's extensive testing performed prior to the grant of the initial waiver. Moreover, RCA believes the AirCell system actually *reduces* the threat of harmful interference to terrestrial networks by providing a reasonable alternative to the unlawful use of unmodified, non-AirCell mobile units while in flight.^{4/}

AirCell Provides Important Public Safety Benefits. As detailed in the Petition, the AirCell system makes a significant contribution to aviation safety.^{5/} Moreover, with its participation in the FAA's Enhanced Aviation Security Program and based on discussions with other government agencies, the AirCell system is poised to provide important capabilities to enhance aircraft security. Indeed, Congress has mandated the installation of air-ground

^{4/} Section 22.925's prohibition against the airborne use of mobile phones is particularly difficult to enforce onboard general aviation aircraft.

^{5/} See Petition at 12-14 (describing, e.g., AirCell's airborne "911" service and FlightGuardian weather and navigation data service). See also "MedAire and AirCell Advance In-flight Medical Emergency Communications," *News Release* (Mar. 3, 2003), available at

communications systems aboard commercial aircraft to enhance aviation security.⁶⁷ RCA is pleased to see rural cellular licensees playing a direct role in contributing to public safety and strengthening the nation's homeland security even from airborne locations – an ability not even contemplated prior to the advent of the AirCell system.

The AirCell System Promotes Competition and Efficient Spectrum Usage. The AirCell system provides a means for rural cellular carriers, as the underlying service providers, to enter a new market. Currently, licensees in the Part 22 Air-Ground Radiotelephone Service dominate the aviation communications market. The waiver of Section 22.925 promotes intermodal competition by permitting cellular licensees to provide service, through AirCell, in direct competition with the air-ground licensees. The Commission should follow its precedent from other contexts where it has promoted intermodal competition, recognizing that it can reduce the likelihood of anti-competitive behavior.⁷¹ Competition is especially needed in the commercial aviation communications market segment, which is currently served by a monopoly provider. To the extent the waiver renewal provides AirCell with the longer term and increased capacity needed to enter this market, members of the flying public should be able to reap the benefits of competition in the form of lower communication costs.

cont'd http://www.medaire.com/air_cell_nr.html (describing new venture to improve air-to-ground communications for in-flight medical emergencies).

⁶⁷ See H.R. Conf. Rep. No. 107-593 at 61 (2002).

⁷¹ See, e.g., *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745, 22726 (2001); *Echo Star Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20599 (2002) (“We have recently taken additional steps to promote intermodal competition in the 2002 DBS Report and Order. In that proceeding, we adopted a number of streamlining measures and other rule changes designed to facilitate the ability for DBS to become a more competitive service.”).

Significantly, this new competition enabled by the AirCell waiver is based on the efficient re-use of spectrum, as AirCell resells the already-available capacity of rural carriers. Accordingly, the AirCell system helps achieve the stated Commission goal of increasing the efficient utilization of spectrum, particularly in rural areas.^{8/} At the same time, AirCell avoids placing any additional burdens on the networks of national carriers, which report spectrum capacity limitations in urban markets.^{9/} Moreover, the AirCell system provides participating carriers with an additional source of revenue to improve their traditional, terrestrial service offerings to rural consumers, another Commission goal.^{10/}

Longer Waiver Term Is Needed. The Petition requests that the Commission extend the waiver indefinitely or at least for a period of ten years. RCA agrees with AirCell that a longer term is needed to encourage existing and prospective customers to make investments in AirCell equipment.^{11/} A longer waiver term would also provide the stability needed for RCA AirCell Partners, as the underlying service providers, to make better business, financial and operational planning decisions. Moreover, the initial waiver term required a new Commission proceeding in just two years, placing financial and administrative burdens on all interested parties. Smaller rural carriers are the least equipped with the resources needed to participate in such frequently recurring proceedings.

^{8/} See, e.g., *Principles for Promoting Efficient Use of Spectrum*, Policy Statement, 15 FCC Rcd 24178, 24182 (2000).

^{9/} See, e.g., *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, Report and Order, 16 FCC Rcd 22668, 22669 (2001) (citing carrier concerns regarding near-term capacity constraints in urban areas).

^{10/} See generally *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Inquiry, 17 FCC Rcd 25,554 (2002).

^{11/} See Petition at 38.

Expanding the Waiver's Scope Is Justified. As evidenced by the increasing minutes of use on the networks of the RCA AirCell Partners, demand for AirCell's services is growing. To meet this growing demand and to expand into new market segments, the Petition requests authority: (1) to expand from six to 19 cellular channel pairs; and (2) to overlay channels used for digital, in addition to analog, terrestrial cellular service. RCA recognizes the need for and supports these requests. Neither of these requests will impede in any way the ability of RCA members to continue expanding services to their terrestrial subscribers, including migrations to digital cellular service. Grant of the Petition will enable the AirCell system to provide more of the same benefits it already offers: more aviation safety and security capabilities, more competition, more efficient use of spectrum, and more growth-enabling revenues to rural carriers.

Conclusion

As described above, the AirCell system continues to present a win-win situation for carriers and consumers alike. In addition to simultaneously promoting competition and the efficient use of spectrum, the system provides critical public safety benefits. For these reasons, the Commission should expeditiously grant AirCell's Petition in its entirety.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 10th day of April, 2003, sent by U.S. Mail, a copy of the foregoing COMMENTS ON PETITION FOR EXTENSION OF WAIVER to the following:

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